

1 COOLEY LLP
STEVEN M. STRAUSS (99153)
2 sms@cooley.com
DENNIS C. CROVELLA (190781)
3 dcrovella@cooley.com
JOHN PAUL OLEKSIUK (283396)
4 jpo@cooley.com
4401 Eastgate Mall
5 San Diego, CA 92121
Telephone: (858) 550-6000
6 Facsimile: (858) 550-6420

7 Attorneys for Defendant / Counterclaim-Plaintiff
8 BLANCHARD TRAINING AND
DEVELOPMENT, INCORPORATED
9

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 LEADERSHIP STUDIES, INC.,

14 Plaintiff,

15 v.

16 BLANCHARD TRAINING AND
DEVELOPMENT, INCORPORATED, and
17 Does 1-10, inclusive,

18 Defendants.
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22 BLANCHARD TRAINING AND
DEVELOPMENT, INCORPORATED,

23 Counterclaim-Plaintiff,
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25 v.

26 LEADERSHIP STUDIES, INC.,

27 Counterclaim-Defendant.
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Case No. 15 CV 1831 WQH KSC

**NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT PURSUANT TO FED
FED. R. CIV. P. 56 ON ALL OF LEADERSHIP
STUDIES' CLAIMS**

*[MEMORANDUM OF POINTS AND
AUTHORITIES, STATEMENT OF
UNDISPUTED MATERIAL FACTS,
DECLARATIONS TOM MCKEE, RICHARD
ANDREWS, AND DENNIS CROVELLA, ESQ.,
MOTION FOR LEAVE TO FILE UNDER
SEAL, AND PROPOSED ORDER SUBMITTED
HEREWITH]*

HEARING DATE: APRIL 30, 2018

COURTROOM 41B

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on April 30, 2018, or as soon thereafter as
 3 this motion may be heard, Defendant-Counterclaimant Blanchard Training and
 4 Development, Incorporated (“Blanchard Training”), will and hereby does move this
 5 Court pursuant to Fed. R. Civ. P. 56 to enter summary judgment in favor of
 6 Blanchard Training on all of the claims brought by Leadership Studies, Inc.’s
 7 (“Leadership Studies”) in this case. Moreover, the fifth claim for cancellation of
 8 Blanchard Training’s SLII® registration cannot survive because 15 U.S.C. § 1119
 9 does not provide an independent basis for jurisdiction over trademark registrations
 10 where there is no underlying infringement claim.

11 Leadership Studies has known for *decades* of conduct complained about in
 12 the Third Amended Complaint (Dkt. 49), including the manner in which Blanchard
 13 Training uses and claims ownership of copyrights and trademarks relating to its
 14 SLII® program in the U.S. and internationally, as well as the manner in which the
 15 parties conducted themselves pursuant to the December 19, 1987 Agreement
 16 between the parties (the “1987 Agreement”). In the meantime, Blanchard Training
 17 made substantial investments in growing its company with the reasonable
 18 expectation that Leadership Studies would not suddenly bring a lawsuit over the
 19 longstanding “*co-petitor*” relationship. In view of Leadership Studies’
 20 unreasonable delay and prejudice that would result to Blanchard Training, the
 21 doctrine of laches prevents Leadership Studies from obtaining any equitable relief
 22 for any of the alleged claims in the Third Amended Complaint, including injunctive
 23 relief or disgorgement of profits.

24 Moreover, the doctrine of estoppel bars the claims in the Third Amended
 25 Complaint ***completely***, due to Leadership Studies’ intentional acts, including active
 26 representations that it would not assert a right or a claim; the inexcusable delay
 27 between the intentional acts and the assertion of the right or claim; and the resulting
 28

1 undue prejudice to Blanchard Training. Leadership Studies is estopped from
2 bringing the claims in the Third Amended Complaint due to its acquiescence.

3 While laches should preclude Leadership Studies from obtaining the primary
4 relief it seeks, in order to comprehensively dispose of the lawsuit Blanchard
5 Training also seeks summary judgment on the bases of estoppel by acquiescence,
6 statutes of limitations, lack of subject matter jurisdiction on the trademark
7 cancellation claim upon dismissal of the other trademark claims, and certain
8 accused conduct not being a breach of the 1987 Agreement nor an infringement.

9 In connection with the dismissal of the trademark claims, the Court is
10 requested to award Blanchard Training a reasonable attorneys' fee under the fee-
11 shifting provisions of the Lanham Act, 15 U.S.C. § 1117(a), because this is an
12 "exceptional case" that warrants an award of reasonable attorney's fees to
13 Blanchard Training. In connection with the dismissal of the copyright claim, the
14 Court is requested to award Blanchard Training a reasonable attorney's fee as the
15 prevailing party under the fee-shifting provisions of the Copyright Act, 17 U.S.C. §
16 505. Upon a favorable ruling on the present motion, Blanchard Training intends to
17 submit a fee petition setting forth the amount and reasonableness of the fees
18 requested.

19 This Motion is based on this Notice of Motion and Motion; the
20 accompanying Memorandum of Points and Authorities; Statement of Undisputed
21 Material Facts (with exhibits); Declarations of Tom McKee, Richard Andrews, and
22 Dennis Crovella, Esq., and all records and papers on file in this action, and any
23 evidence or oral argument offered at any hearing on this Motion.

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1 Dated: March 26, 2018

COOLEY LLP
STEVEN M. STRAUSS (99153)
DENNIS C. CROVELLA (190781)
JOHN PAUL OLEKSIUK (283396)

4 s/Steven M. Strauss

Attorney for Defendant / Counterclaimant
BLANCHARD TRAINING AND
DEVELOPMENT, INCORPORATED
E-mail: sms@cooley.com

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